

U.S. Department of Labor

Office of Administrative Law Judges
St. Tammany Courthouse Annex
428 E. Boston Street, 1st Floor
Covington, LA 70433

(985) 809-5173
(985) 893-7351 (FAX)



Issue Date: 01 February 2006

CASE NO.: 2005-LDA-61

OWCP NO.: 02-139671

IN THE MATTER OF

**JASON C. BERLIN,
Claimant**

v.

**KELLOGG-BROWN & ROOT,
Employer**

and

**INSURANCE CO. OF THE STATE OF PENNSYLVANIA,
Carrier**

APPEARANCES:

**Gary Pitts, Esq.
On behalf of Claimant**

**Jason Schoenfeld, Esq.
On behalf of Employer/Carrier**

**BEFORE: C. RICHARD AVERY
Administrative Law Judges**

DECISION AND ORDER

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 et. seq., (the Act), brought by Jason C. Berlin (Claimant) against Kellogg-Brown & Root (Employer) and Insurance Company of the State of Pennsylvania (Carrier). The formal hearing was conducted in Houston, Texas on August 25, 2005. Each party was represented by counsel. The

following exhibits were received into evidence: Joint Exhibit 1, Claimant's Exhibits 1-22, and Employer Exhibits 1-20. This decision is based on the entire record.¹

Statement of Evidence

Claimant was born December 15, 1966. He is 39 years old, and has completed one year of college. After an honorable discharge from the Air Force, where he served as a firefighter/EMT, Claimant began his civilian career. Claimant's jobs carried him overseas on more than one occasion to such places as Hungary, Uzbekistan, and Pakistan. Sometime in the fall of 2004, while working for Employer as an EMT and firefighter in Uzbekistan, Claimant became ill and his symptoms included vomiting, headaches, weight loss and general malaise.

After two weeks of such symptoms, as well as itching, dark urine, white feces and yellowing of his eyes, Claimant, on October 10, 2004, was seen at the company clinic and referred to the U.S. Army clinic. Four days later, on October 14, 2004, Claimant returned to his home in the United States and went immediately to an emergency room the night he arrived. The Claimant was released and referred to Dr. Andrew Ringel, a gastroenterologist.

Claimant saw Dr. Ringel on October 20, 2004, and was subsequently diagnosed with Epstein-Barr virus. Once Dr. Ringel started treating Claimant, Claimant by his own admission got over the symptoms pretty quickly. In fact by December 21, 2004, Claimant was released to return to work and contacted Employer about such a return, but upon reflection he and his wife decided he should stay with family and not return overseas. Accordingly, Claimant took a job at less pay working in the local emergency room facility and by subsequent test was shown to have a normal blood profile.

Claimant's Exhibit 1 is the Army medical record of October 10, 2004, which reveals Claimant's appearance at the clinic in Uzbekistan exhibiting the symptoms he testified about.

Claimant's Exhibit 3 and Employer's Exhibit 7 contain the emergency room records of October 15, 2004, where Claimant presented himself the day of his return to the United States.

Claimant's Exhibit 2 is comprised of two letters from Dr. Ringel. One opines that when written in November of 2004, Claimant at the time was unable to work due to his viral illness. The second letter states "it is very likely that he contacted his virus while overseas and Uzbekistan." A third letter from Dr. Ringel presented post-trial and marked

¹ The following abbreviations will be used throughout this decision when citing evidence of record: Trial Transcript: "Tr. ____"; ALJ Exhibit: "ALJX, p. ____"; Joint Exhibit: "JX, p. ____"; and Employer's Exhibits "EX __, p. ____".

CX 22 elaborates by explaining that while such an infection can occur anywhere, “it is more prevalent in the under developed world.”² Employer’s Exhibit 6 has Dr. Ringel’s complete file concerning Claimant. According to the first page of the exhibit, Dr. Ringel released Claimant to full duty and to return to Uzbekistan as of December 21, 2004, and marked “yes” that he was aware of the physical and psychological requirements of Claimant’s job duties at that location.

Employer’s Exhibit 20 offered post-trial is the report of Dr. Jack Groover, a board certified gastroenterologist. On behalf of Employer, Dr. Groover examined Claimant in December of 2005. From the medical records provided him, he determined Claimant had become infected with Epstein-Barr virus “probably” while working in Uzbekistan in September 2004 or on a stateside visit in June of 2004. By February 2005, however, Dr. Groover opined that Claimant had a “complete resolution of the problem” and had been returned to work by Dr. Ringel in December of 2004. He also expressed reservations that Claimant’s unsanitary work conditions were a cause of the illness, since the virus is usually “transmitted through oropharyngeal contact.”

Findings and Conclusions

I find that Claimant has invoked the Section 20(a) presumption and Employer has failed to rebut the same.

Claimant, as well as his medical records, describe a healthy and virtually symptom free person until the fall of 2004 when a multitude of symptoms befell him. Ultimately, the cause of his condition was determined to be a viral infection known as Epstein-Barr. An infection which Claimant’s treating physician, Dr. Ringel, observed in a letter found at CX 2 to have very likely been contracted in Uzbekistan. Dr. Ringel subsequently explained in CX 2 that such an infection is more prevalent in the under developed countries. In other words, there existed harm to Claimant and there exists an opinion that something in his work environment could have caused or aggravated such a harm.

As to rebuttal, even Employer’s own doctor, Dr. Groover, while offering no reason why the infection could have occurred in June 2004, while Claimant was stateside visiting family, agreed Claimant was infected with the virus “probably while working in Uzbekistan....”(EX 20). Consequently, except for the off handed remark of Dr. Groover “or while visiting the United States in June or 2004,” Employer has offered no evidence in rebuttal of the invoked presumption.³

² Claimant described the conditions where he worked in Uzbekistan as dusty and unsanitary, stating local residents with poor hygiene were used on base to clean and prepare food.

³ Claimant was in Uzbekistan for months in 2004 and was only home for a visit in June for one week. Also, there is no evidence suggesting that any exposure to the virus could have occurred during that one week visit.

Turning next to the nature and extent of Claimant's condition, I find that he was temporary totally disabled from October 14, 2004 (the date of his return to the states) until December 21, 2004, after at which time he reached maximum medical improvement, was released to work and decided of his own accord not to return to overseas employment. Clearly, the latter was a decision he and his wife made in regard to the family, not because Claimant suffered a disability that otherwise hindered him from returning to his previous employment.

ORDER

It is hereby **ORDERED, ADJUDGED, AND DECREED** that:

(1) From October 14, 2004 until December 21, 2004, Employer/Carrier shall pay to Claimant temporary total disability compensation based on the maximum compensation rate;⁴

(2) Employer/Carrier shall be responsible for all reasonable and necessary Section 7 medical expenses related to this claim;

(3) Employer shall pay interest on all of the above sums determined to be in arrears as of the date of service of this Order at the rate provided by in 28 U.S.C. § 1961;

(4) All computations of benefits and other calculations which may be provided for in this Order are subject to verification and adjustment by the District Director; and

(5) Claimant's counsel shall have twenty days from receipt of this Order in which to file a fully supported attorney fee petition and simultaneously to serve a copy on opposing counsel. Thereafter, Employer shall have ten (10) days from receipt of the fee petition in which to file a response.

So ORDERED this 1st day of February, 2006, at Covington, Louisiana.

A

C. RICHARD AVERY
Administrative Law Judge

⁴ The parties agreed that Claimant's average weekly wage was such that he is entitled to the maximum compensation rate.